

## SUMMARY OF PROPOSED SAFE ASSEMBLY ORDINANCE

Short-term assemblies conducted on City roadways, such as demonstrations and political rallies, create traffic control and public safety issues for the City and its residents.

The City's current "parade and procession" ordinance, T.C. § 20-150, reads as follows:

### **Sec. 20-150. Permission required for processions and parades; compliance with chapter.**

No procession or parade shall occupy, march, or proceed along any street or sidewalk except in accordance with written permission granted by the city traffic engineer and such other regulations as are set forth in this chapter which may apply. Written requests shall be made a minimum of fourteen (14) days in advance. This section shall not apply to funeral processions, except that the chief of police may regulate such processions as unreasonably interfere with normal traffic flow or pose a threat to public peace or safety.

The current ordinance has not been significantly amended since its original enactment in 1953. It has a number of potential problems:

- Arguably, it does not cover assemblies at a fixed location on a City roadway, as opposed to parades and processions that move along City roadways.
- It requires permission from the "city traffic engineer," even though short-term roadway assemblies impact other City agencies, including the Tucson Police Department, most directly.
- It does not codify the City's actual current administrative procedures in this area.
- It does not differentiate between short-term assemblies and more elaborate special events, such as the Rodeo Parade or 4th Avenue Street Fair.
- Finally, under modern court decisions defining permissible First Amendment regulation of short-term assemblies, the current ordinance may be legally inadequate. Its 14-day deadline for permit applications is too long. It contains no objective standards to guide the grant or denial of a permit. It sets no deadline for that decision. And it does not provide for prompt judicial review of permit denials.

At the request of members of the Mayor and Council, City staff has developed a proposed Safe Assembly Ordinance ("Ordinance"). It would codify, and make accessible to interested groups and the general public, modernized City provisions for permitting and regulating assemblies on City roadways. The Ordinance would be codified as a new Article XII under Chapter 20 ("Motor Vehicles and Traffic").

The following is a summary of the Ordinance. For each topic, the section where the specific provision can be found is shown in parentheses.

**Permit from Chief of Police needed for roadway assemblies.** Assemblies on City roadways need a permit from the Chief of Police (“Chief”) (20-553(A)).

**Assembly defined.** The Ordinance defines an assembly as “any gathering or grouping of persons collected together at one location, or traveling as a collective body from one location to another location, for a common ceremonial, educational, political, religious, social or other purpose,” including demonstrations, parades, processions, protests, picket lines, or rallies (20-552(A)(2)).

**Exemptions.** The following activities do not need a permit under the Ordinance (20-553):

- Assemblies held on private or non-City governmental property (20-553(C)(1)(a)), in City parks (20-553(C)(1)(b)), or at the Tucson Convention Center (20-553(C)(1)(c)), so long as they do not spill over onto a City roadway.
- Assemblies on City sidewalks that conform to traffic signals and laws, and allow passage of other pedestrians on the sidewalk (20-553(C)(2)).
- Assemblies regulated by the proposed Special Events Ordinance (20-553(B)).
- Vehicle or bicycle processions that travel with other traffic and obey traffic laws (20-553(C)(3)).
- Funeral processions that consist solely of vehicles and comply with A.R.S. § 28-776 (20-553(C)(4)).
- Operation of emergency vehicles in compliance with state law (20-553(D)(1)).
- Governmental operations, where necessary traffic control and public safety is coordinated with the Chief (20-553(D)(2)).

**Chief accepts permit applications.** Applications must be filed with the Chief (20-554(A)).

**Applications are due at least 72 hours before assembly, but the Chief must waive this deadline if the City can prepare within actual time allowed.** Permit applications must be made at least 72 hours before the assembly (20-555(A)). However, the Chief must waive this deadline and grant a permit if, after considering objective factors listed in the ordinance, the Chief finds that the City can adequately prepare for traffic regulation, crowd control, and public safety within the time between the application and the assembly (20-555(B)).

**No cost to applicant.** The applicant need not pay any application fee, indemnify the City, or pay for insurance, traffic control, or police.

**Deadline for Chief's permit issuance.** The Chief must grant or deny the permit within 10 business days from the date the application is received (20-557(A)), except in the following cases:

- If the application is filed ten days or less, but at least 72 hours, prior to the assembly, the Chief must decide not later than 24 hours before the assembly (20-557(A)(1)).
- If the application is filed less than 72 hours before the assembly, the Chief must decide not later than the scheduled time of the assembly (20-557(A)(2)).

Except in the case of prohibited rush hour assemblies (*see* 20-556), if the Chief does not meet the deadline for decision, the permit is deemed granted (20-557(B)).

**Objective standards for permit issuance.** The Chief must uniformly consider each permit application on its merits (20-558(A)). The Ordinance specifies objective, traffic- and public safety-related standards the Chief must use to grant or deny permits (20-558(B)). The Chief must issue a permit unless one of the listed grounds for denial exists (20-558(B)).

If the Chief finds that the assembly as applied for does not meet the conditions for a permit, but that imposing additional or modified terms or conditions would allow a permit to issue, the Chief must impose the additional or modified terms and conditions and grant the permit (20-558(D)). The Chief cannot deny a permit unless it is impossible to grant a permit either as applied for or with additional or modified terms and conditions (20-558(E)).

**Priority of time and location for certain assemblies and special events.** The Ordinance gives priority of time and place to assemblies or special events historically held at that location on a known or calculable day or date, or series of days or dates, each year. The Chief maintains a list of events having priority. Otherwise, the earliest application has priority (20-554.01).

**Prohibition on Rush-Hour Roadway Assemblies.** Due to heavy traffic, and the lack of effective and safe alternate routes for such traffic, the Ordinance prohibits roadway assemblies during morning or afternoon rush hours on the roadway of any arterial or collector streets, or on the roadway of any street in the central business district (20-556).

**Content-based permit denials prohibited.** In deciding whether to issue a permit, the Chief is prohibited from considering the assembly's speech content or message, the anticipated public reaction, or the applicant's identity or associational relationships (20-558(C)).

**Chief's powers when permit issues.** The Chief is authorized to implement traffic control and public safety measures for an issued permit (20-560).

**Permitholder as responsible party.** The permit is issued in the name of the applicant, who becomes the permitholder (20-561(A)). The permitholder is responsible for compliance with the Ordinance, the permit, and any orders the Chief issues pursuant to either (20-561(B)). The permitholder, or a representative designated in writing, must be present during the assembly; identify himself or herself to police upon request; and keep the permit and, if a designated represen

tative, a copy of the designation as representative available for police inspection (20-561(C)). The permitholder's written designation of a representative must be provided to the Chief no later than the start of the assembly (20-561(D)).

**Revocation of permits.** The Chief is authorized to revoke permits for noncompliance with the Ordinance or the permit, or under other specified conditions (20-562).

**Chief's decision final; written reasons required.** The Chief's decision to deny or revoke a permit, or to grant a permit with additional or modified conditions, is administratively final (20-557(D), 20-562(D)). The Chief must provide written reasons for these actions to the applicant or permitholder by the close of the next business day (20-557(C), 20-562(B)).

**Judicial review.** The Ordinance expressly authorizes prompt City Court judicial review of permit denials and revocations, or grants of permits with additional or modified conditions (20-557(D), 20-562(C)). The Ordinance specifies the procedures the City Court is to follow (20-563(A)-(H)). This remedy is nonexclusive and does not prohibit other state or federal court actions (20-563(I)).

**Prohibited conduct.** The Ordinance prohibits certain specified conduct by permitholders, participants, or spectators in connection with assemblies (20-564), and declares violations of the ordinance, or regulations issued by the Chief, to be a misdemeanor (20-567).

**Separation of assemblies.** The Ordinance authorizes the Chief to take specified actions to separate assemblies where direct contact between them might represent a danger to freedom of expression or to public safety, and specifies the factors the Chief is to consider in making this decision (20-566).

**Response to assemblies conducted without, or in violation of, permit.** The Ordinance specifies the actions the Chief may take in response to assemblies conducted without a permit, or in violation of permit requirements, and the factors the Chief is to consider in deciding what action to take (20-565).

**Unlawful assemblies declared public nuisances.** The Ordinance declares roadway assemblies conducted without, or in violation of, a permit to be public nuisances, and requires the City Court to assess an administrative charge of up to \$2,000, to cover City response costs, against persons convicted or held responsible for organizing or conducting them (20-567).

**Chief may issue regulations and develop forms.** The Chief is authorized to issue needed regulations and develop application and permit forms (20-568).

**No effect on or by other laws.** The Ordinance does not affect, and is not affected by, other permit requirements, exemptions, laws, rights, or remedies (20-559).

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